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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/157521

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 09, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on June 10, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that the Petitioner was overissued FoodShare benefits between February 12, 2012 through January 31, 2013 and February 1, 2013 and January 31, 2014.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

|

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Jose Silvestre, Income Maintenance Specialist Advanced  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 4, 2012, the agency sent the Petitioner a notice indicating that she would be receiving FoodShare benefits; \$65.00 for the month of February 2012 and \$111 for March 2012 forward.

This allotment was based upon income of \$980 every other week and rent of \$481.00. (Exhibit 2, pgs. 17-22)

3. On July 27, 2012, the agency sent the Petitioner a notice indicating that as of August 1, 2012, she would be receiving \$296 per month in FoodShare benefits. This allotment was based upon income of \$742.42 every other week. (Exhibit 2, pgs. 24-27)
4. On February 4, 2012, the agency sent the Petitioner a notice indicating that as of March 1, 2013, she would be receiving \$128 per month in Foodshare benefits. This was based upon income of \$1039.20 earned income received every other week and child support in the amount of \$40.31 each month. (Exhibit 1, pgs. 29-34)
5. On or about October 11, 2013, the agency became aware of a possible overpayment of FoodShare benefits, due to the underreporting of income. (Exhibit 2, pg. 35)
6. On March 19, 2014, the agency sent the Petitioner two Notifications of FoodShare Overissuance:
 

Claim number [REDACTED], indicating that the Petitioner was overissued FoodShare benefits in the amount of \$1856.00 for the period of February 12, 2012 through January 31, 2013.

Claim number [REDACTED], indicating that the Petitioner was overissued Foodshare benefits in the amount of \$1339.00 for the period of February 1, 2013 and January 31, 2014.

(Exhibit 2, pgs. 59-70)
7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 9, 2014. (Exhibit 1)
8. During the times in question, Petitioner's household consisted of three people. (Exhibit 2, pgs. 17-34)

### DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), emphasis added; see also *FoodShare Wisconsin Handbook*, (FSH) § 7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

However, whose error caused the overpayment does make a difference in terms of how far back the agency can recoup overpaid benefits.

The look back period for client errors begins with the date of discovery (the day the IM discovered the potential that an overissuance may exist) and extends backward:

1. Six years, or
2. To the month the change would have been effective had the group timely reported it, whichever is most recent.

...

The look back period for non-client errors begins with the date of discovery (the day the IM discovered the potential that an overissuance may exist) and extends backward:

1. Twelve months, or
2. To the month the error was effective had the change been acted on timely, whichever is most recent

The agency asserts that the Petitioner caused an over issuance of benefits to occur, because she under reported her income.

#### *February 2012*

According to the Fair Hearing Overview, Petitioner's FoodShare benefits should not have been backdated to the month of application, February 2012, because the Petitioner did not provide verification of her income until March 26, 2012. (Exhibits 2, pg. 1) Thus, the overpayment for February 2012 was caused by agency /non-client error.

The agency became aware of a possible overpayment of benefits in October 2013. Thus, the look back period extends only to October 2012 for non-client errors. As such, the agency cannot recoup the overpayment that took place in February 2012.

#### *March 2012*

The agency contended that the Petitioner underreported her income for March 2012 and asserts that there is a discrepancy between what Petitioner reported and what is contained in the state wage record. However, for the first quarter of 2012, the income in the State Wage Record, matched the Compensation Detail Report from Petitioner's employer. (Exhibit 2, pgs. 4 and 5; Exhibit 3, pgs. 5, 37-38 and 72-73)

Looking at the overpayment worksheets, it appears that when the agency calculated the overpayments for March 2012, it relied upon the State Wage record to determine Petitioner's income. (See Exhibit 3, pgs. 5 and 67) This was not correct, because the Petitioner provided a Compensation Detail Report, showing her actual earnings, when she applied for benefits in March 2012. It is undisputed that based upon Petitioner's income, as reported in that Compensation Detail Report, the Petitioner was entitled to receive FoodShare benefits for the month of March 2012. As such, there is no overpayment for March 2012.

#### *April 2012*

As there is no evidence to indicate that Petitioner's household included an elderly, blind or disabled (EBD) member, the FoodShare Wisconsin Handbook (FSH) states that she had to report any change in household income that exceeded 130% of the FPL:

##### **6.1.1.2 Change Reporting for All Other Food Units (Reduced Reporting)**

All other food units [i.e., household's which do not have an EBD member] are only required to report if their total monthly gross income exceeds 130% ([8.1.1](#)) of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL.

As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as "Reduced Reporting" requirements.

...

*FSH, §6.1.1.2.*

This follows Federal law which directs that States may:

*"...require households with income that are assigned 6-month or longer certification periods to report only changes in the amount of gross monthly income exceeding 130% of the monthly poverty income guideline."* 7 C.F.R. § 273.12(a)(vii); (emphasis added.)

In April 2008, 130% of the Federal Poverty limit for a household of three was \$2,008 per month. *FSH §8.1.1*

The Compensation Detail Reports, are the only evidence of what Petitioner was earning on a bi-weekly bases and shows the date Petitioner received her paychecks and in what amounts. They are more detailed than the State Wage Record and come from a large company that one may assume has a dedicated payroll service. Thus, the Compensation Detail Reports are the best available information concerning Petitioner's in the current record.

Whether taking a monthly average income for the second quarter of 2012 ( $\$6893.97 \div 3 = \$2297.66$ ) or looking at the income reported in the Compensation Detail Report, it is clear that Petitioner had an increase in income. According to the Compensation Detail Report, Petitioner received two paychecks in April 2012, one with reported gross income of \$1088.03, dated April 13, 2012 and one with reported gross income of \$1033.58 dated April 27, 2012. (Exhibit 2, pg. 5) So, Petitioner's total actual income for April was:

$$\$1088.03 + 1033.58 = \$2121.61$$

Both calculations show that Petitioner went over the 130% income limit of \$2008, so Petitioner was required to report the increase in income by the tenth of May. *See FSH, §6.1.1.2 above.* It is undisputed that the Petitioner did not report this increase income.

The question then becomes how the amount of the overissuance, once a required report of a change is not made, is to be calculated. The FSH also addresses this:

#### **7.3.2.1 Client and Non-client Error**

Consider the [FS](#) group's reporting requirements when calculating the overissuance. *Do not use income or expenses, or changes in income and expenses that were not reported and were not required to be reported.*

...

*FSH, §7.3.2.1 ;(emphasis added).*

This provision of the FSH reiterates this:

...

When determining if an overissuance occurred due to an unreported increase in total gross monthly income, compare the total actual unconverted income amount to the income reporting limit for the household size to determine if the income should have been reported. Enter the converted income amount to determine ongoing benefit eligibility. Use the income and expenses reported or required to be reported for each month of the adjustment period. *In claim calculations, disregard income that was not previously reported and was not required to be reported.* *FSH, §7.3.2.1. (Emphasis added).*

Thus, because Petitioner was not obligated to report the increase in income until May 10, 2012, the overpayment period would not begin until June 2012. *See DHA Decision Proposed and Accepted, Case FOP/137829.*

*July 2012*

Looking at the Compensation Detail Report, it appears that Petitioner's gross income went down in July 2012, because she received two paychecks in July 2012, one with gross income of \$982.66 and one with gross income of \$537.10. As such, the agency will have to re-determine whether an overpayment occurred in July 2012 and how much.

*August 2012*

The Petitioner completed a Six Month Report Form (SMRF) in July 2012. On or about July 24, 2012, the Petitioner provided two paystubs, one dated June 8, 2012, showing a gross income of \$1122.60 and one dated July 20, 2012, showing one gross income amount of approximately \$537.10. (Exhibit 3, pgs. 43 and 44)

The agency in its Fair Hearing Overview conceded that it was agency error to accept the paystubs, instead of pending the case for further income verification.

The agency became aware of a possible overpayment of benefits in October 2013. Thus, the look back period extends only to October 2012 for non-client errors. As such, the agency cannot recoup any overpayment that might have taken place in August 2012.

*The rest of 2012 and January 2013.*

Looking at the Compensation Detail Report, it appears that the Petitioner's actual income in August 2013 went up. The Petitioner received three paychecks, one on August 3, 2012 with gross income of \$931.73, one for August 17, 2013 with gross income for \$1199.07 and one for August 31, 2012 with gross income for \$1327.96, totaling \$3458.76.

Petitioner's income of \$3458.76 exceeded the 130% FPL limit of \$2,008. As such, the Petitioner should have reported this increase in income by September 10, 2012. Thus, the overpayment period would not begin again until October 2012. Looking at the Compensation Detail Report, it appears that the overpayment would have continued through December 31, 2013.

*February 2013*

In January 2013, the Petitioner completed a renewal. (Exhibit 3, pg. 1) On January 28, 2013, the Petitioner provided electronic paystubs dated January 4, 2013 and January 18, 2013. (Exhibit 3, pgs. 39-42).

Looking at the overpayment worksheets, it appears that the agency calculated the overpayment for February 2013, averaging Petitioner income for the first quarter of 2013, as reported in State Wage Record. This is not correct. Just because there is a discrepancy between the State Wage Record and the paystubs, does not mean the information in the January paystubs is incorrect. Indeed, the agency has provided no proof that the information in the paystubs is not correct.

Petitioner provided electronic paystubs, as required, showing her actual income for January 2013, which would have been used to prospectively budget income for February 2013. It is undisputed that based upon that income, the Petitioner was entitled to FoodShare benefits for February 2013. As such, there is no proof that an overpayment occurred in February 2013.

*March 2013*

Looking at the Compensation Detail Printout, Petitioner received three paychecks in March 2013, one on March 1, 2013 with gross income of \$1009.82, one on March 15, 2013 for \$909.47 and one on March 29, 2013 for \$1027.07, for a total of \$2946.36.

In March 2013, 130% of FPL for a family of 3 was \$2069 per month. Petitioner's income of \$2946.36, put her over that limit. As such, she was required to report that change in income by April 10, 2013.

There is no dispute that Petitioner failed to report that change in income. As such, the overpayment period would resume effective May 2013.

The agency, in the Fair Hearing Summary, indicated that the Petitioner reported no other changes of income since January 2013. The Petitioner did not dispute this. Looking at the Compensation Detail Printout, the overpayment period likely ran through January 2014, but the agency will have to review the Compensation Detail Reports and recalculate the amount of the overpayment.

If Petitioner disagrees with the agency's redetermination of the overpayment, she will have to file a NEW appeal.

### **CONCLUSIONS OF LAW**

The agency correctly determined that the Petitioner was overissued FoodShare benefits, but it did not correctly determine the overpayment periods, nor did it correctly calculate the overpayment amounts.

**THEREFORE, it is**

### **ORDERED**

That the agency amend Claim [REDACTED] to include only the months of June and July 2012 and October 2012 through January 31, 2013.

That the agency amend Claim [REDACTED] to include only the months of May 2013 through January 2014.

The agency shall recalculate the overpayment using the Compensation Detail Report contained in the exhibits.

The agency shall take all administrative steps necessary to complete these tasks within 10-days of this decision.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

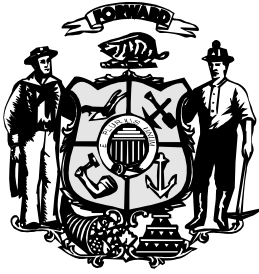
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 2nd day of July, 2014.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on July 2, 2014.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability